

SERVICE DATE – AUGUST 14, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 749

NATIONAL ASSOCIATION OF REVERSIONARY PROPERTY OWNERS—PETITION
FOR RULEMAKING

Decided: August 13, 2018

On June 14, 2018, the National Association of Reversionary Property Owners (NARPO) filed a petition requesting that the Board consider establishing three new rules related to interim trail use/rail banking under § 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). On July 5, 2018, the Association of American Railroads (AAR) replied in opposition to NARPO's petition for rulemaking.¹ After the July 5, 2018 deadline for replies to NARPO's petition,² comments were submitted by Community Council Railroad Committee; Madison County Mass Transit District; Iowa Natural Heritage Foundation; City of Seattle, Washington; Save Taxes & Our Property; and several individuals. In addition, on July 27, 2018, Rails-To-Trails Conservancy (RTC) filed what it described as a "preliminary response" in opposition to NARPO's petition and requested a 30-day extension of time to respond fully to NARPO's filing. RTC asserts, among other things, that additional time is needed to evaluate the specific case examples cited in NARPO's petition and to alert key members of its trail constituency who might have an interest in the subject matter of the petition.

In the interest of compiling a complete record, all pleadings submitted to date will be accepted. RTC's 30-day extension request, however, will be denied. While the Board has not yet determined whether it will begin a rulemaking proceeding to consider NARPO's proposed rules, should the Board do so, all interested persons will have an opportunity to participate and provide their views during any subsequent notice and comment period.

¹ Subsequently, on July 23, 2018, NARPO filed a reply to AAR's reply, along with a petition for leave to file arguing that good cause exists to address new matters contained in AAR's filing. While the Board's regulations do not generally permit replies to replies, see 49 C.F.R. § 1104.13(c), in the interest of having a more complete record, the Board will accept NARPO's July 23, 2018 filing. See City of Alexandria, Va.—Pet. for Declaratory Order, FD 35157, slip op. at 2 (STB served Nov. 6, 2008).

² Under 49 C.F.R. § 1104.13(a), a party "may file a reply or motion addressed to any pleading within 20 days after the pleading is filed with the Board, unless otherwise provided."

It is ordered:

1. All comments submitted by August 14, 2018 are accepted into the record.
2. RTC's request for an extension of time is denied.
3. NARPO's petition for leave to file a reply to reply is granted and its reply is accepted into the record.
4. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.